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7 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
8

9 UNITED STATES OF AMERICA,

10 Plaintiff,

2:20-CR-00006-WFN-1

11 v.

12 KENT WADE KIMBERLING,

13 Defendant.
14
15

United States' Pre-Sentence
Investigation Review and
Objections

16
17 Plaintiff, United States of America, by and through Joseph H. Harrington,
18 Acting United States Attorney for the Eastern District of Washington, Patrick J.
19 Cashman, Assistant United States Attorney for the Eastern District of Washington,
20 respectfully submits the following Notice of Review of the United States Probation
21 Office's Draft Presentence Investigation Report (PSR). (ECF No. 59).

22 Objection #1 (Paragraphs 38, 41, and 46):

23 The United States submits that an additional four (4) levels should be added to
24 the Defendant's adjusted offense level because he possessed between eight (8) and
25 twenty-four (24) firearms. Both the cannon and the silencer that were located are
26 firearms pursuant to 26 U.S.C. § 5845(a). The statute defines firearms as: "... (7) any
27 silencer (as defined in section 921 of title 18, United States Code); and (8) a
28 destructive device." The PSR also notes that the cannon as being a firearm and

1 cylindrical device as a “firearm silencer or muffler as defined.” *See* ECF No. 59, ¶¶
2 29 and 30. Also noted in the PSR, were the six firearms, not including the cannon or
3 silencer, that were seized by law enforcement. *See* ECF No. 59, ¶ 12.

4 The United States Sentencing Guideline (USSG) §2K2.1(b)(1) application notes
5 stated that “[f]or purposes of calculating the number of firearms under subsection
6 (b)(1), count only those firearms that were unlawfully sought to be obtained,
7 unlawfully possessed, or unlawfully distributed...” *See* USSG §2K2.1(b)(1), comm.
8 n. 5. The United States submits, although not charged, the Defendant is an unlawful
9 user of controlled substances and therefore is prohibited from possessing firearms and
10 ammunition. Specifically, the PSR notes the Defendants statements regarding his use
11 of marijuana, his hospital blood results noting the presences of amphetamine,
12 methamphetamine, and marijuana on August 6, 2019, and his prior convictions for the
13 possession, use, and distribution of controlled substances. *See* ECF No. 59, ¶¶ 19, 51,
14 58, 64, 77, 92, 177, 178.

15 Therefore, the Defendant being an unlawful user of controlled substances and
16 being in possession of 8 to 24 firearms, should have an adjusted offense level of
17 twenty-one (21). Accordingly, the Defendant’s advisory guideline range should be 46
18 to 57 months.

19 The United States does not have any other legal objections.

20 Dated: June 1, 2021.

21 Joseph H. Harrington
22 Acting United States Attorney

23 s/ Patrick J. Cashman
24 Patrick J. Cashman
25 Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Molly Winston: molly_winston@fd.org

s/ Patrick J. Cashman

Patrick J. Cashman
Assistant United States Attorney